



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,844	09/05/2003	Patrick T. Jouppi	6280US	8392

7590 07/27/2005  
John A. O'Toole  
GENERAL MILLS, INC.  
P.O. Box 1113  
Minneapolis, MN 55440

EXAMINER

ELKINS, GARY E

ART UNIT	PAPER NUMBER
----------	--------------

3727

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/656,844

Applicant(s)

JOU PPI ET AL

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-27 in the reply filed on 09 May 2005 is acknowledged. The traversal is on the ground(s) that no undue burden would exist to examine all the claims as compared to the elected claims since the claims in each Group include many similar limitations. This is not found persuasive because the search involved in the examination of the method and product involves significant additional time as compared to a search of only the product.

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 28 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 09 May 2005.

### ***Specification***

3. The disclosure is objected to because of the following informalities: on page 15, lines 10 and 11 are grammatically unclear.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. Claims 18 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The embodiment of fig. 6 as described on pages 12 and 13 of the specification is

Art Unit: 3727

unclear with respect to how the tab 214 will interlock with the slot 212 when the carton is formed. It would appear that the tab 214 would be located adjacent the foldline 226 and that the slot 212 would be located adjacent the foldline 252. The specification provides no description of how the interlock in the carton formed from the blank of fig. 6 is made.

5. Claims 18 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification provides no description of how a box is made from the blank of fig. 6 where the tuck slot 212 is adapted to receive the tab 214 as part of the reclosure operation.

6. Claim 10, 18 and 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10, "the leading edge at the first end" and "the...second side regions" each lack antecedent basis in the claims. Claim 10 is unclear with respect to which sections are being claimed as offset from one another.

Claims 18 and 19 are unclear with respect to how the construction as defined in these claims, i.e. the fig. 6 embodiment allows interlocking of the tab and slot.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3727

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6, 8, 9, 11, 15, 20-22, 25 and 26, and claims 10, 18 and 19, as best understood in view of paragraphs 4-6 above, are rejected under 35 U.S.C. 102(b) as being anticipated by either Lorenz or DT '432 (fig. 1 emb). Each of Lorenz and DT '432 discloses a blank and carton including a first closure flap 16, 31 respectively which includes a tuck slot open to the leading edge of the flap and a second closure flap 60; 16a, 18, respectively including a tab 25. With respect to claim 9, the first and third sections in each of Lorenz and DT '432 are considered to extend inwardly or toward the second side region (104, 36, respectively) relative to the first end of the major panel as claimed. With respect to claim 15, the first ends of the first and second major panels (e.g. 24, 62 in Lorenz) are considered generally aligned, (e.g. in a direction up and down as shown in fig. 1 of Lorenz) insofar as claimed. With respect to claims 25 and 26, note is made that the major panels in both Lorenz and DT '432 are considered front or back relative to the position of the viewer.

9. Claims 1-6, 8, 9, 11, 14, 15, 20-22 and 25-27, and claim 10 as best understood in view of paragraphs 4-6 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Davidson (fig. 1 emb). Davidson discloses a blank and carton including a first closure flap (A6) which includes a tuck slot open to the leading edge of the flap and a second closure flap (A4) including a tab a4. With respect to claim 9, the first and third sections in Davidson are considered to extend inwardly or toward the second side region (a15) relative to the first end of the major panel as claimed. With respect to claims 25 and 26, note is made that the major panels in Davidson are considered front or back relative to the position of the viewer.

Art Unit: 3727

10. Claims 1-6, 8, 9, 11, 15, 16, 20-22, 25 and 26, and claim 10 as best understood in view of paragraphs 4-6 above, are rejected under 35 U.S.C. 102(b) as being anticipated by DT '083. DT '083 discloses a blank and carton including a first closure flap (15) which includes a tuck slot open to the leading edge of the flap and a second closure flap (14) including a tab (26). With respect to claim 9, the first and third sections in DT '083 are considered to extend inwardly or toward the second side region relative to the first end of the major panel as claimed. With respect to claims 25 and 26, note is made that the major panels in DT '083 are considered front or back relative to the position of the viewer.

11. Claims 1-6, 8, 9, 11, 14, 15, 17, 20-22 and 25-27, and claim 10 as best understood in view of paragraphs 4-6 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards. Edwards discloses a blank and carton including a first closure flap (c) which includes a tuck slot open to the leading edge of the flap and a second closure flap (a) including a tab formed at the end thereof. With respect to claim 9, the first and third sections in Edwards are considered to extend inwardly or toward the second side region relative to the first end of the major panel as claimed. With respect to claims 25 and 26, note is made that the major panels in Edwards are considered front or back relative to the position of the viewer.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3727

13. Claims 7, 12, 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Davidson, DT '083, Edwards, Lorenz or DT '432. Each of Davidson, DT '083, Edwards, Lorenz and DT '432 discloses all structure of the claimed carton and blank except a taper angle of the first section to the second section in the range of 40-70 degrees (cl. 7), an opening forming the tuck slot with an area of 0.5 square inches (cl. 12), a longitudinal width of the tuck slot of at least .125 inches (cl. 13) or a taper angle of the first and third sections relative to the second section of greater than 30 degrees (cl. 23). With respect to claim 7, it would have been obvious to make the taper angle of the first section from the second section in the range of 40-70 degrees within any one of Davidson, DT '083, Edwards, Lorenz or DT '432 as an arbitrary selection of a range of angles over that shown in each prior art reference. No functional distinction is seen between the claimed range of angles and the angle shown in each prior art reference nor has any such distinction been asserted by Applicant. Design applications are available for the patenting of differences merely in the appearance of an article. With respect to claim 12, it would have been obvious to make the area of the opening forming the tuck slot at least .5 square inches within any one of Davidson, DT '083, Edwards, Lorenz or DT '432 as an arbitrary selection of the size of the opening area over that shown in each prior art reference. No functional distinction is seen between the area claimed as compared to the area shown in each prior art reference nor has any such distinction been asserted by Applicant. Design applications are available for the patenting of differences merely in the appearance of an article. With respect to claim 13, it would have been obvious to make the longitudinal width of the tuck slot at least .125 inches within any one of Davidson, DT '083, Edwards, Lorenz or DT '432 as an arbitrary selection of the length over that shown in each prior art reference. No functional distinction is

Art Unit: 3727

seen between the length claimed and the length shown in each prior art reference nor has any such distinction been asserted by Applicant. Design applications are available for the patenting of differences merely in the appearance of an article. It is noted that the area of the opening and the length are dependent upon the relative size of the container. With respect to claim 23, it would have been obvious to make the taper angle of the first and third sections relative to the second section greater than 30 degrees within any one of Davidson, DT '083, Edwards, Lorenz or DT '432 as an arbitrary selection of the angle over that shown in each prior art reference. No functional distinction is seen between the claimed angle of greater than 30 degrees and the angle shown in each prior art reference nor has any such distinction been asserted by Applicant. Design applications are available for the patenting of differences merely in the appearance of an article.

14. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 23 above, and further in view of Roseth et al. Each of modified Davidson, DT '083, Edwards, Lorenz and DT '432 evidences all structure of the claimed carton except a taper angle of the slot which is greater than a taper angle of the tab. Roseth et al discloses a tab and slot interlock where the tab and slot are each formed with angled side portions which engage to form the interlock and where the taper angle of the slot (81) is greater than the taper angle of the tab (66). It would have been obvious to make the taper angle of the slot greater than the taper angle of the tab in any one of Davidson, DT '083, Edwards, Lorenz or DT '432 as taught by Roseth et al to facilitate a more secure interlock of the tab and slot.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

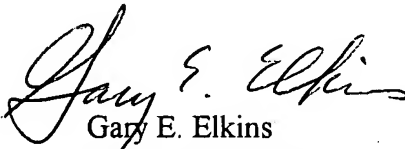


In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727